

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.428 OF 2005

Mrs Ramona Pinto alias Ramona D'Souza ... Petitioner
v/s

Denzil D'Souza and others ... Respondents

Mr Gaurav Joshi i/b M/s Little and Co. for Petitioner.

Mr Chakrapani Mina with Ms Nandini Kahitan i/b M/s

Khaitan and Co. for Respondents.

CORAM : D.K. DESHMUKH J.

DATE : 17TH APRIL 2006.

P.C. :-

1. Heard learned counsel for both the sides.

Perused the order dated 20th March 2006. In a petition filed under section 9 of the Arbitration and Conciliation Act 1996, for making any interim measure, the Court has to first come to prima facie opinion so far as the merits of the matter are concerned. Admittedly, there is partnership agreement between the parties which contains arbitration clause. The case of the respondents is that the petitioner has retired from the partnership firm, but there is no document of retirement deed. So far as the register maintained by the Registrar of Firms is concerned, it continues to show the petitioner as partner of the firm. The entries made in the register maintained by the Registrar of Firms are presumed to be correct unless proved otherwise. Therefore, for the purpose of making interim order under section 9, the Court will have to go by entries made in the register maintained by the Registrar of Firms which has presumptive value. It was submitted that the principal grievance of the respondents against the ad-interim order made by this Court is that by ad-interim order the respondents have been restrained from preventing the petitioner from attending office of

the firm and taking part in the affairs. According to the respondents, the petitioner has not participated in the business and has not attended the office for last 19 years. Therefore, an order should not be made whereby she can participate in the business of the firm and attend the office. If prima facie it is clear that the petitioner continued to be the partner, then under the Indian Partnership Act, she will have statutory right to take part in the business of the firm and therefore, she will be entitled to a temporary injunction for enforcing her statutory right. Because for last several years she did not exercise her statutory right will not denude her of that right. At this stage, an inference cannot be drawn that the petitioner had waived her statutory right. Taking overall view of the matter therefore, especially considering that after the Court made ad-interim order, there is no further affidavit filed by the respondents, in my opinion, interest of justice would be subserved by confirming the ad-interim order.

The ad-interim order dated 20th March 2006 is confirmed.

Petition is disposed off.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.